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BIS TO PROPOSE EXPANSION OF ENTITY LIST CRITERIA

The Bureau of Industry and Security (BIS) the week of June 4 will propose a change in its current regulations to expand the scope of persons, organizations and parties that can be included on its Entity List. The proposal would allow the agency to go beyond the current criterion, which limits the list to parties that are linked to the proliferation of weapons of mass destruction (WMD), to include those acting contrary to the national security or foreign policy interests of the United States. This would include entities that support terrorist groups, deal in illegal conventional arms or refuse to allow BIS to conduct an end-use check.

BIS officials have been talking about expanding the Entity List since they found they had limited enforcement tools to deal with Mayrow General Trading, a United Arab Emirates (UAE) firm that was accused of providing materials to insurgents in Iraq for the building of improvised explosive devices (IEDs). The agency ended up having to issue a General Order imposing licensing restrictions on Mayrow and its affiliated firms (see **WTTL**, Sept. 11, 2006, page 4).

The BIS proposal will offer five examples of behavior that could get a party added to the list. They are: (1) companies or entities that support people involved in terrorism; (2) any action that could enhance the military capability or terrorist activities of governments on the terrorist list, also known as the T-5; (3) transferring or producing conventional weapons or supplies; (4) deliberately failing or refusing to comply with an end-use check; and (5) engaging in conduct that poses a risk of imminent violation of the Export Administration Regulations.

“One of the key motivating reasons for doing this is when we learned about the Mayrow company transshipping parts for IEDs to Iran through Dubai, we found that under the current regulations we did not have the legal authority to put Mayrow on the Entity List,” BIS Assistant Secretary Chris Padilla told **WTTL**. Instead, BIS issued a General Order on Mayrow. “What we found was that a lot exporters weren’t checking the General Orders when they do their screens,” he added. “This is intended to make it easier to consolidate into one list of suspect customers,” Padilla said. The proposal also will include new procedures for seeking modification or removal from the Entity List, which identifies about 60 parties now.

DOHA AGRICULTURE CHAIRMAN SEES SOME FLEXIBILITY IN TALKS

The U.S. and other developed countries may be starting to lower their demands for large cuts in the highest tariffs on farm products in developing countries, as well as from the European Union (EU), informal meetings in Geneva the week of May 28 revealed. Without naming

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specific countries, New Zealand Ambassador Crawford Falconer, who chairs the Doha Round agriculture negotiating committee, said that in talks on market access “there was some flexibility exhibited, especially from the demandeur side, on what they felt was the cut in the top band, which is no more than I would have implicitly expected at some point.” Falconer said he didn’t think anybody “would believe that 85% [cut] in the top band was seriously in play.” Although he would not say what the new top cut is likely to be, he said “there is some movement there toward a more realistic zone.”

Falconer released the second half of his “challenge paper” for the farm talks May 25, but is still in discussions on his first paper (see **WTTL**, May 7, page 2). “I intend to put forth a revised text by the second half of June,” he told reporters. He said he hoped there could be consensus by then on the main elements of an agriculture deal, but even if there is not, he will issue the text and let everyone react to it. Although the pace of farm talks remains slow, Falconer said he believes agreement can be reached by the end of July.

Falconer also reported “signs of flexibility” in discussions on food aid. “We are virtually at a point where I could draft a text,” he told reporters. He said he has not seen a huge amount of flexibility from the U.S. on food aid, but there have been realistic discussions about what might be in the export competition portion of an agriculture agreement. On domestic support, Falconer indicated positive discussions about disciplines on blue and amber box requirements. “Nobody was ruling anything out,” he said.

The agriculture chairman’s second paper focused primarily on such issues as the special safeguard mechanism, treatment of recently acceded members, preference erosion, and small vulnerable economies. On safeguards he said, “There are, frankly, too many variables on this issue with positions that are too wide apart for me to be in a position to even begin to define a centre of gravity on this issue,” he wrote. He said he believed any use of the mechanism would have to be based on only two triggers: import volume and price. “I suspect that the concept to focus on is how to reasonably ensure that ‘normal’ trade is not disrupted while genuinely ‘special’ situations are able to be responded to flexibly,” he stated.

He said he thought past definitions of countries that should be considered small vulnerable economies should be adopted in the round. One proposal would define these countries as those whose average share of world merchandise trade is 0.16% or less and world trade in non-agricultural products is 0.1% or less and world trade in agricultural products of 0.4% or less. “In the absence of any contrary view, I will take that this definition is acceptable,” he wrote.

Based on World Trade Organization (WTO) staff research, Falconer said a Doha Round accord should not have a significant impact on countries that benefit from special trade preferences, such as the Caribbean Basin Initiative (CBI) or the European Union’s preferences for former colonies in Africa, the Caribbean and Pacific (ACP). Two products, bananas and sugar, represent almost 85% of the value of preferential agriculture exports from those countries. “Bananas will be settled or it won’t be,” he wrote. “Let’s not kid ourselves: it is not going to sleepwalk to a solution through whatever generalized approach we have on tariff formulas in the Round. It will be a banana-specific outcome and it will only work as a full and final settlement by all involved.” he declared.

He said it is not clear what liberalization, if any, will occur for sugar. “Strictly speaking one cannot be sure what the exact impact will be because one does not know what precisely will be done by way of tariff cuts, one does not yet know whether or not sugar will be declared sensitive and, if it is declared sensitive, the treatment is not currently settled either,” he wrote.

FALCONER’S SECOND AGRICULTURE PAPER GETS MUTED RESPONSE

There has been positive but muted reaction to Ambassador Crawford Falconer’s second “challenge paper” on issues to address in the Doha Round agriculture negotiations, according to

sources in Geneva. Most of the discussions the week of May 28 were still focused on the New Zealand ambassador's first challenge paper released in mid-May (see story above). "A lot advanced" on all subjects, said one developing country's agriculture negotiator about talks on the first paper. Talks have ranged over export subsidies and competition, domestic support and market access, the official said. Falconer's second installment focuses on issues of concern to developing and least developed countries, including the special safeguard mechanism (SSM) for developing countries, tropical products and the erosion of special preferences.

"The text on SSM doesn't have too much detail, but it appears to some extent faithful to the mandate," said Philippine Ambassador. to the WTO Manuel Teehankee. The second paper is more balanced on SSM than the first, he said. "The challenge now is how to build convergence and compromise to achieve progress," Teehankee added.

Reaction to Falconer's latest installment, which emerged May 25, was limited because scheduling problems prevented most groups from meeting to discuss the paper, another developing country agriculture negotiator said. The number of participants at initial consultations on June 1 increased from an expected 20 to 36. The general atmosphere was positive, one participant told WTTL. The meeting in Geneva came as U.S. Trade Representative Susan Schwab and Agriculture Department Secretary Mike Johanns met June 1 in Brussels with European Union (EU) Trade Commissioner Peter Mandelson and Farm Commissioner Mariann Fischer Boel. With pressure mounting for a breakthrough deal by the end of July, a meeting of the G-4 is planned for later in June. The G-8 Summit in Germany June 6-8 is also seen as crucial

In his paper, Falconer suggested that rules for applying the special safeguard mechanism (SSM) to correct injury from a surge of imports for special products would be different for developing countries than for developed countries (SSG) to protect sensitive products. "This I won't even begin to argue on any technical or legalistic grounds," he said in his paper. "Irrespective of any such considerations, it reflects a political reality in my view. Mind you, I would not necessarily read overly much into that. As you will be aware, my sense is that even if the SSG is retained, it will be, at the very least, very sharply reduced in its coverage," he explained.

Falconer said he believes the mandate from the Hong Kong Ministerial for developed and some advanced developing countries to grant duty-free and quota-free access to at least 97% of products from least developed countries applies to agriculture as well as non-agriculture products. "Those that do not provide duty and quota-free market access for all products originating in least-developed countries would be required to take steps to progressively achieve this objective," he wrote. "Unless there is any objection, I will assume that this applies specifically to agriculture tariff lines just as it does to all tariff lines. That is, duty and quota-free access for at least 97 % of least-developed countries' agriculture exports will be provided from the start of implementation by developed countries and developing countries declaring themselves in a position to do so," he wrote.

PENTAGON RENEWS CONCERNS ABOUT CHINA'S MILITARY GROWTH

The Defense Department's latest annual report, released May 25, on China's military power and expansion continues to provide ammunition for those who want to tighten export controls on the Chinese. While adding nothing new to past warnings about Beijing's effort to acquire military and dual-use technology both legally and illegally, the report notes that Immigration and Customs Enforcement (ICE) has initiated more than 400 investigations into illicit exports of arms and technology to China.

The report underscores the concerns that are behind calls for stricter application of deemed export rules to university research. It cites, "China's reverse brain drain," saying, "Many of China's new generation of scientists, engineers and managers are returning to China after receiving training and gaining experience abroad," it states. The Pentagon report says China has historically relied on Russia and Israel to obtain advanced military technology. It notes

that the Israeli Knesset in February adopted Wassenaar Arrangement controls on munitions list exports. "It remains unclear to what extent the new export controls will prevent additional sensitive military-related transfers to Beijing in the future," it says. The report restates U.S. concerns about proposals in the EU to lift its arms embargo on China. "Although the issue officially remains on the EU agenda, the current political sentiment among most Member States remains opposed to lifting the embargo in the near future," the report states.

A Chinese Foreign Ministry spokesman reacted quickly to the release of the Pentagon report. The report "continues to spread myth of the 'China Threat' by exaggerating China's military strength and expenses out of ulterior motives," the spokesman said. "Each sovereign state has the right and obligation to develop necessary national defense strength to safeguard its national security and territorial integrity," he added. The spokesman's statement, however, appeared to support one of the main themes of the Pentagon's assessment that much of China's military build-up is aimed at a possible war with Taiwan. "We will never tolerate the 'Taiwan Independence' or any attempt by anyone to separate Taiwan from China by whatever means," he declared.

* * * BRIEFS * * *

BIS: Mario Mancuso sworn in May 30 as BIS under secretary following his Senate confirmation May 25.

DDTC: Frank Ruggiero will assume the responsibilities as acting deputy assistant secretary for defense trade controls on June 1, filling post of Greg Suchan, who retired May 31 (see **WTTL**, May 14, page). Ruggiero most recently was acting DAS for international security operations. Earlier he was a senior advisor to BIS under secretary.

TREASURY: President Bush May 31 said he intends to nominate former BIS Under Secretary David McCormick to be under secretary of Treasury for international affairs. Last year McCormick moved from BIS to be deputy assistant to the president and deputy national security advisor for international economic affairs. McCormick's post at White House will be filled by Daniel M. Price, who is currently partner at law firm of Sidley Austin in Washington where he chairs its international trade and dispute resolution practice. From 1989 to 1992 he served in USTR's office and before that was at State and represented U.S. at Iran-U.S. Claims Tribunal in The Hague.

OTCG: ITC May 31, by divided votes, determined that terminating antidumping orders on imports of oil country tubular goods from Argentina, Italy, Japan, Korea and Mexico would not lead to recurrence or continuation of injury to U.S. industry. Existing orders will be revoked.

STEEL NAILS: Mid Continent Nail Corporation, Davis Wire Corporation, Gerdau Ameristeel Corporation, Maze Nails and Treasure Coast Fasteners, Inc., filed antidumping petitions at ITC and ITA May 29 against imports of steel nails from China and the United Arab Emirates.

COATED PAPER: ITA May 30 issued preliminary decision in antidumping case against imports of coated free sheet paper from China, Indonesia and Korea. Preliminary margins for Chinese imports ran from 23.19% to all-other rate of 99.65%; for Indonesia single importer and all-other rate was 10.85%; for Korea, three firms got zero margin, one was 30.86% and all-other rate was 18.45%

CHINA: House Ways and Means Committee Chairman Charles Rangel (D-N.Y.) May 29 asked ITC to conduct Section 332 study into U.S.-China trade imbalance, and whether and to what extent China uses various forms of government intervention to promote investment, employment, and exports.

EXPORT ENFORCEMENT: BIS has reached settlement agreement with Zhonghe Ji, also known as James Ji. Under deal, Ji will pay \$2,000 of \$55,000 civil fine with rest suspended on condition he remains in compliance with EAR. Ji was one of seven business executives arrested in July 2004 on criminal charges for allegedly being part of scheme to export controlled goods to China. Then-Attorney General John Ashcroft issued press release publicizing arrests. Since then, government has dropped most charges against individuals or accepted plea agreements for lesser charges. Justice dismissed complaint against Ji Dec. 22, 2006, as part of pre-trial diversion agreement (see **WTTL**, July 5, 2004, page 3).

CUSTOMS: Assistant Commissioner for Operations Jayson Ahern has been named deputy commissioner to fill post created by coming retirement of Deborah Spero in August.